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FREEDOM, LOYALTY, DISSENT. By Henry Steele Commager. New York: Oxford University Press 1954.

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ions now filled by political appointees and would thus make the federal service more attractive to persons of ability. It would enable the government to utilize better the expertness and experience of its qualified, regular employees by advancing them to higher administrative positions now filled by political appointment. It would establish greater internal responsibility for the operation of executive departments and agencies, for subordinate officials would owe undivided loyalty to their administrative superiors. It would give the President and his department heads a freer hand in the selection of their principal assistants, which is essential if they are to be held responsible for the conduct of the government. Instead of weakening, it would strengthen the role of the President as the leader of his party and would lessen the disputes over patronage, which in the past have often marred his relations with the Senate. It would also strengthen the role of the Senate in passing upon the President's selections for the chief policy-determining offices of the government.¹

The author's conclusions and criticisms are based on documented facts, and mention must be made of the prodigious research that preceded the writing of this work. While there certainly are apologists for the system of senatorial confirmation, they will have to expend great effort to present a defense which is as substantial and thorough in its scope as the indictment of the system of senatorial confirmation and its trend toward expansion which has been handed down by Professor Harris in this book.

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FREEDOM, LOYALTY, DISSENT. By Henry Steele Commager. New York: Oxford University Press 1954. Pp. viii, 155 \$2.50.

Professor Commager, in the true Holmes tradition, fears that when a society achieves a set of absolute values it has "no need for further truth, and properly silences those who submit unorthodox ideas." It is worthy of note that this thesis coincides with that of Professor MacIver, reknowned political theorist, who contends that democracy, unlike any other political school of thought, lacks a uniform and orthodox philosophy.

MacIver, in what might be described as a socio-psychological approach, postulates a safety valve theory of democracy which by providing a vent for dissatisfaction, prevents explosions and allows for gradual evolutionary change. Democracy thrives under criticism while, conversely, dictatorship is destroyed by it.

The recognition of the importance of this right to differ led the New Deal Supreme Court to declare that the area of expression was so indispensable

1. Page 398.

to the democratic process that it had come to occupy a preferred status in our constitutional scheme of things. Yet, because the court ostensibly bases its decision on constitutional and natural rights, Commager warns us against taking refuge in legalisms. He believes that the real proof of the superiority of freedom over any other philosophy is its practical success and that every generation must make this discovery for itself.

Professor Commager, with almost rapier skill in his deft employment of brilliant and cogent phraseology, builds a magnificent case to prove that freedom is not incompatible with security but essential to it. The absence of free inquiry and free experimentation not only leads to conformity but to sterility. "The greatest danger that threatens us," observes this keen analyst, "is neither heterodox thought nor orthodox thought but the absence of thought." Since totalitarianism is committed to the error of its policies, it necessarily must lose out to a system of constant self-criticism and self-appraisal.

Probably the most pernicious doctrine in the recent assaults upon freedom has been that of "guilt by association." As an historian of note, Professor Commager informs us that our reliance upon voluntary association has roots that go back several hundred years. Here too we may note that the author, like his colleague MacIver, believes that pluralism is one of the mainstays of our democratic institutions. Those tens and hundreds of thousands of voluntary organizations serve to counter-balance "big government" only so long as they are free. The new method of "guilt by contamination" will mean simply that persons will disaffiliate or refuse to join any organization other than those with the official seal of government approval. The end result will be a monolithic society.

Professor Commager's five stimulating and provocative essays raise a number of significant issues that are deserving of some special comment. First, it must be observed that his basic defense of freedom is utilitarian, and that such an approach at least for the popular mind, necessarily runs the risk of confusing truth and workability. It is not the purpose of this reviewer to attack the practice of substantiating absolute values with evidence of practical accomplishments. He does, however, oppose using this method as a conclusive test of freedom. Conceivably, a good case could be made to prove that modern man's great need is to "escape from freedom" and to seek refuge in security and authority. To this contention the pragmatist might reply that the successful philosophy is predicated upon the satisfaction of individual needs over a long span of time, and that absolute values have pragmatic origins despite the respectability they may have acquired with age. Be that as it may, it is this observer's contention that pragmatism lends itself at least temporarily to the abuse of minority rights by majority rule. By making nothing sacred, it places no inviolate limits upon the area within which government is permitted to operate. Life is far

too short for one generation's enslavement to have to wait for pragmatic refutation by generations yet unborn.

The myths by which man lives and for which he is willing to fight and die cannot be emotionally evoked by the detached principles of pragmatism. If for no other reason than this, pragmatism can never take a hold upon the popular imagination and the dreams which help to sustain man during his finite existence. This, too, is the stuff from which history is made. The great conundrum facing the modern thinker is to find a philosophy which will leave wide open the area of experimentation, and yet still maintain basic ethical values. Professor Commager acknowledges the fact that the genius of the American People is its ability to combine both the transcendental and practical.

This brings us to still another corollary of the pragmatic thesis. Commager tells us that "if the preservation of our freedom depends upon the courts then we are indeed lost, for in the long run neither courts nor Constitution can save us from our errors, follies or wickedness." Unfortunately practice seems to bear out this contention. We have but to look at the decisions of the Supreme Court during these and other critical days.¹ It will be argued, however, that it is this volatile quality of the Court that has given us a living and dynamic constitution. In a book review on *The Constitutional World of Mr. Justice Frankfurter* by Professor Samuel J. Konefsky² this writer espoused the thesis of self-restraint for the Court in the realm of social and economic legislation but warned against the placing of civil liberties in the same category. "The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied in the courts."³ A realistic acknowledgment that the Court, too, responds to election returns should not discourage us in our efforts to establish a Court which will symbolize our collective conscience and act as a restraint upon today's majority. Here principles, ideals and the heritage of the nation must guide the Court. "Government must be a partner with freedom, not merely an umpire called in to see that every group plays according to the rules. Otherwise authority is too weak to sustain the rules and unity and the party of the dominant group will erode our fundamental freedoms."⁴

1. It has been observed that the greatest nullification of our civil liberties has been in the social and economic realms rather than the political and legal spheres. However, in view of the Court's recent pronouncements on psychological and social effects, it becomes somewhat difficult to delineate these fields. Moreover, the tone set by Court decisions and political actions has ramifications which are felt in the social and economic milieu. See Justice Edgerton's dissent in *Barsky v. U.S.*, 167 F.2d 241 (1948).

2. See Sofen, Book Review, 2 *MIAMI L.Q.* 260-266 (1950).

3. *West Virginia State Board of Education v. Barnett*, 319 U.S. 624, 638 (1943).

4. MacIver, Robert C., "Authority and Freedom in the Modern World," a lecture delivered in honor of the Bicentennial of Columbia University and published in *Man's Right to Knowledge*, Columbia University Press, New York, 1954.

Despite some differences with the philosophical concepts of the author the reviewer must conclude that Professor Commager has given us a very able and most stirring defense of American freedom. There was a time when we laughed at the Russian's discovery of bourgeois traits in music and detective stories, but we in America are developing our own party line. Too often now the educator, the civil servant, the scientist, the minister, the writer and other intellectual leaders are faced with the question of playing it safe or playing it honest. In some cases it has reached a point where such persons have so well suppressed any deviationist thinking that even their consciences have been quieted. The end result will be to leave a clear field to the ruthless and unprincipled demagogues.

Professor Commager's book may be attacked by the cynics as another manifestation of the "bleeding heart" society and by the ultra-realists as another failure to reach the extremists who need conversion most. It is submitted that the intellectuals, yea, even the college professors, are most in need of renewed courage and faith in freedom. In this task, Professor Commager has succeeded.

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TAXATION IN THE UNITED STATES. By Randolph E. Paul. Boston: Little, Brown and Company, 1954. Pp. xii, 830. \$15.00.

All true civilization is ninety per cent heirlooms and memories — an accumulation of small but precious deposits that have gone before us. Only very proud or very ignorant people imagine that our muddle-headed present can begin everything all over again every day — and invent a new alphabet, a new multiplication table, a new code of laws, and a new religion.¹

Fog everywhere, insistent fog up the river, incessant fog down the river — gas looming through the dank fog on main street and the side streets.² Never can there come fog as deep, thick, and rolling as when some so-called tax experts are murkily engaged in one of the endless stages of a tax case, groping knee-deep in statutory technicalities, tripping one another up by specious arguments on a slippery precedent while vaporizing the precedent itself, and making a flourish-filled pretense of getting somewhere. These same myopic lawyers stress the technical aspects, and, aside from parroting the cliché "taxation is based on revenue needs," overlook the policy, the philosophy, if you please, of the law.

On the other hand, we have competent tax experts who realize that all the problems confronting our contemporary government are not contemporary, and who, in a responsible manner, do not allow the study of taxation and of

1. Rev. Robert I. Gannon, S.J., Former President, Fordham University.

2. With apology to Charles Dickens.